

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston,

In the case no. 08-P-651

WILLIAM DAPKAS

vs.

CIVIL SERVICE COMMISSION & another.

Pending in the Superior

Court for the County of Suffolk

Ordered, that the following entry be made in the docket:

Judgment affirmed.

By the Court,

Ashley Mear, Clerk

Date April 14, 2009.

NOTE

The original of the within rescript
will issue in due course, pursuant
to M.R.A.P. 23

APPEALS COURT

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

08-P-651

WILLIAM DAPKAS

vs.

CIVIL SERVICE COMMISSION & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff appeals from a decision of the Civil Service Commission (commission) that affirmed the termination of the plaintiff as a correction officer by the Department of Correction (department). On appeal, he contends that he was wrongly terminated because the department's reasoning exceeded the scope of the original notice to him of a pending disciplinary hearing. He also argues that the hearing officer inappropriately asked department lay witnesses for their opinion on the ultimate issues in the case and that his department superior had a grudge against him and ultimately lied about the incident report. We affirm.

The plaintiff first contends that a letter dated September 6, 2002, did not provide adequate notice that the department would consider prior disciplinary issues as a reason for termination. However, the issue was properly before the commission as the plaintiff's own attorney mentioned it during

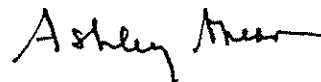
¹ Department of Correction.

pleadings in the Superior Court referred to this opinion testimony, the plaintiff's contention below was that the decision was not supported by substantial evidence.

Finally, the plaintiff contends that his supervisor, Deputy Superintendent Saba, harbored a grudge toward him and lied in order to set him up to be disciplined, and ultimately terminated. First, this argument is waived as he did not raise it in his administrative appeal to the Superior Court. Second, we do not disturb an administrative agency's findings of facts, especially those concerning the credibility of witnesses, unless they are unsupported by the record. Cobble v. Commissioner of the Dept. of Social Servs., 430 Mass. 385, 390 (1999). Here, there is substantial evidence to support the commissioner's findings of fact and conclusions that the employee filed falsified documents as part of a scheme to win workers compensation benefits.

Judgment affirmed.

By the Court (McHugh, Green
& Fecteau, JJ.)



Clerk

Entered: April 14, 2009.